

6

1 HAGOP T. BEDOYAN, CSB NO. 131285  
JACOB L. EATON, CSB NO. 244834  
2 KLEIN, DENATALE, GOLDNER,  
COOPER, ROSENLIB & KIMBALL, LLP  
3 4550 California Avenue, Suite 200  
Bakersfield, California 93309  
4 Telephone: (661) 395-1000  
Facsimile: (661) 326-0418  
5 Email: jeaton@kleinlaw.com

6 Proposed Attorneys for Debtor-in-Possession

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**  
10

11 In re:  
12 J & D WILSON AND SONS DAIRY,  
13 Debtor-in-Possession.

Case No. 14-10588-B-11

Chapter 11

DC No. KDG-3

Date: March 13, 2014

Time: 9:00 a.m.

15 Place: United States Bankruptcy Court  
2500 Tulare Street, Fifth Floor  
Department B, Courtroom 12  
Fresno, California

17 Judge: Honorable W. Richard Lee

18 **MOTION FOR PRELIMINARY INJUNCTION UNDER 11 U.S.C. § 105 STAYING**  
19 **LITIGATION AGAINST DEBTOR'S GENERAL PARTNERS**

20 J & D Wilson and Sons Dairy, a California general partnership, Debtor and Debtor-in-  
21 Possession in the above-referenced case ("Debtor"), respectfully moves the court for a  
22 *Preliminary Injunction under 11 U.S.C § 105 Staying Litigation against Debtor's General*  
23 *Partners* and represents as follows:

24 **JURISDICTION AND VENUE**

25 1. The Debtor commenced this Chapter 11 case by filing its Voluntary Petition  
26 under Chapter 11 of the Code on February 7, 2014. There is no Chapter 11 trustee and Debtor  
27 is also a Debtor-in-Possession.

28 ///

1           2.       This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and  
2       157. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). These matters  
3       have been referred to the Court by United States District Court for the Eastern District of  
4       California according to General Orders 182 and 223.

5           3.       Venue is properly in this Court pursuant to 28 U.S.C. § 1409(a).

6                               **LEGAL BASIS FOR MOTION**

7           4.       Under 11 U.S.C. § 105, Debtor seeks an order of the Court staying certain  
8       litigation against Debtor’s two general partners until Debtor confirms a plan of reorganization.

9           5.       In the Ninth Circuit, a debtor seeking this type of order must establish its  
10      entitlement to a preliminary injunction. Accordingly, the debtor must show:

- 11           a.      A reasonable likelihood of reorganization;
- 12           b.      The possibility (or probability) of irreparable harm if the injunction is not
- 13                    granted;
- 14           c.      That the balance of the hardships favors the Debtor over the creditor;
- 15           d.      That any public policy considerations favor the Debtor.

16      *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1093 (9th Cir. 2007).

17          6.      Here, the Debtor can show all of these:

- 18           a.      The Debtor’s cash flows indicate a confirmable reorganization plan is
- 19                    reasonably likely.
- 20           b.      The Debtor will be irreparably harmed if the litigation is not stayed because its
- 21                    two general partners will be forced to defend that litigation instead of focusing
- 22                    on reorganizing the Debtor.
- 23           c.      The balance of the hardships tips in favor of the Debtor because the hardship it
- 24                    will suffer—being deprived of its management during a key period in its
- 25                    reorganization—outweighs the harm to the creditor, who will experience a
- 26                    temporary delay in liquidating its claim against the Debtor an Debtor’s general
- 27                    partners.

28      ///

1 d. The only relevant public policy considerations indicate the injunction should be  
2 granted.

3 **FACTUAL BASIS FOR MOTION**

4 **A. Debtor's background and business.**

5 7. Debtor is a general partnership formed on January 1, 2001. The partners of  
6 Debtor are James L. Wilson (25%) and Darla Wilson (25%) and Cornelius Vanderham and  
7 Eleanor Vanderham as trustees of the Vanderham Family Trust, dated March 17, 1994 (50%).  
8 James L. Wilson manages the day-to-day operation of the dairy.

9 8. Debtor is engaged in a dairy business in Fresno County, California. Debtor's  
10 primary assets are real estate, dairy and farming equipment, and livestock. Debtor owns about  
11 3,385 animals including milk cows, dry cows, heifers, and calves.

12 **B. The state-court litigation against Debtor and its two general partners.**

13 9. Kasiner Farms sued Debtor, James Wilson, and Cornelius Vanderham in Fresno  
14 County in 2012 for breach of contract. That action (Fresno County Superior Court Case  
15 No. 12CECG00907) is still pending ("the Lawsuit"). A trial readiness hearing for the Lawsuit  
16 is set for March 28, 2014, and trial is set for April 1. Debtor and the partners were represented  
17 by the Law Offices of Nathan Ide in that action until it was stayed as to Debtor by Debtor's  
18 bankruptcy filing.

19 10. Kasiner Farm's counsel informed Mr. Ide that it intends to pursue the action  
20 against Mr. Wilson and Mr. Vanderham and, if it is successful, attempt to collect on any  
21 judgment against their personal assets.

22 11. Kasiner Farms seeks approximately \$80,000 in damages from Debtor and Mr.  
23 Wilson and Mr. Cornelius. Debtor and its general partners filed a cross-complaint against  
24 Kasiner Farms and its principal for unpaid equipment rent of approximately \$156,674.00 that  
25 is property of Debtor's estate.

26 **C. Debtor's prospects for reorganization.**

27 12. Debtor's Schedules listed assets of about \$27 million and liabilities of about  
28 \$29.5 million. Debtor's 14-week cash-collateral budget indicates Debtor will generate about

1 \$700,000 in net cash flow by mid-May.

## 2 POINTS AND AUTHORITIES

### 3 A. Debtor has a reasonable probability of confirming a plan of reorganization.

4 13. To obtain an order under section 105 staying litigation against a non-debtor, the  
 5 Debtor must first establish it has a reasonable probability of reorganizing. *In re Excel*  
 6 *Innovations, Inc.*, 502 F.3d 1086, 1095-96 (9th Cir. 2007) (“In this context, the most relevant  
 7 “future proceeding” is the debtor's reorganization. Because [Debtor's] claim is ultimately that  
 8 arbitration would harm its ability to reorganize, it makes sense to require a showing of a  
 9 “reasonable likelihood of a successful reorganization.”). To show this, the debtor need only  
 10 demonstrate a “meaningful contribut[ion] toward reorganization,” which courts have described  
 11 as “not a high burden.” *In re Excel Innovations, Inc.*, 502 F.3d at 1097.

12 14. Debtor’s cash-collateral budget indicates that by mid-May Debtor will have  
 13 more than enough to pay 503(b)(9) and administrative claims and Debtor will be in a position  
 14 to quickly propose a feasible reorganization plan. Debtor has been working closely with its  
 15 secured creditors and has negotiated a cash-collateral usage stipulation with Wells Fargo Bank,  
 16 its senior secured creditor (as to personal property). While Debtor’s current goal is to  
 17 reorganize and continue to operate its dairy business, a liquidating plan is not outside the realm  
 18 of possibilities. However, the next several months are a critical time for the Debtor in  
 19 determining whether an operating or liquidating plan will be pursued. Further, the general  
 20 partners of Debtor will need to focus their attention on Debtor’s Chapter 11 case whether the  
 21 Chapter 11 plan provides for continued operations or a liquidation of assets.

### 22 B. Debtor will be irreparably harmed if the state court litigation is not stayed.

23 15. Next, Debtor must establish that it may be irreparably harmed if the injunction is  
 24 not granted. *In re Excel Innovations, Inc.*, 502 F.3d at 1097. To do so, the debtor may show  
 25 that the litigation would “interfere with its reorganization or harm creditors.” *In re Excel*  
 26 *Innovations, Inc.*, 502 F.3d at 1099. This can take the form of “needlessly divert[ing] key  
 27 employees from the debtor's reorganization effort.” *In re Eagle-Picher Indus., Inc.*, 963 F.2d  
 28 855, 860 (6th Cir. 1992)

1           16. Debtor is a general partnership with four general partners, including James and  
2 Darla Wilson and Cornelius and Eleanor Vanderham. Debtor's business is generally managed  
3 by partner James Wilson, with both Mr. Wilson and Mr. Vanderham being involved in strategic  
4 management. If the state court litigation continues, the partners will need to spend extensive  
5 amounts of time at the end of March preparing for the trial instead of managing Debtor. This  
6 will leave Debtor without effective business management for that time. Additionally, they will  
7 be unavailable to work on Debtor's reorganization during that time.

8           17. Then, the partners will be unavailable to assist with the Chapter 11 case for the  
9 duration of the trial, which is scheduled to begin April 1, 2014. Trial will last about five days.  
10 Again, Debtor will be without effective management during that time period and neither  
11 Mr. Wilson nor Mr. Vanderham will be able to work on Debtor's reorganization.

12           18. The spring of 2014 is the time that Debtor will be completing its analysis of its  
13 ability to reorganize and preparing a Disclosure Statement and Plan.

14           19. March and April are key months in Debtor's reorganization because much of the  
15 net cash that is generated this spring will be necessary to make a confirmable plan feasible. If  
16 Debtor is left without management its ability to reorganize will be seriously jeopardized. As in  
17 *In re Eagle-Picher Indus., Inc.*, the diversion of Debtor's management to defend themselves in  
18 the state-court case constitutes irreparable harm to the Debtor.

19 **C. The balance of the hardships tips in Debtor's favor.**

20           20. The third element the Debtor must show is the balance of hardships. *In re Excel*  
21 *Innovations, Inc.*, 502 F.3d at 1097. Again, if the action is not stayed as to Debtor's partners,  
22 Debtor will be left without effective management and Debtor's partners will be unable to  
23 dedicate the necessary time to the Chapter 11 case during a crucial time period. This will be  
24 extremely hard on Debtor.

25           21. If the action is stayed, the hardship to Kasiner Farms will be a delay in the  
26 liquidation of its claim against Debtor and Debtor's partners until after Debtor's plan is  
27 confirmed. Debtor's plan will either provide for payment of that claim (in full or in part) or  
28 allow the claim to be liquidated after plan confirmation. Accordingly, Kasiner Farms will

1 suffer a short delay, but will potentially gain a reorganized Debtor and resolution of its claim.

2 **D. Public policy considerations favor staying the state court litigation.**

3 22. Public policy favors reorganizations. See eg. *In re Great Nw. Recreation Ctr.,*  
4 *Inc.*, 74 B.R. 846, 857 (Bankr. D. Mont. 1987). Here, Debtor needs the attention and concern  
5 of its managers to be, at least temporarily, directed at its reorganization rather than their  
6 potential personal liability to Kasiner Farms. Although public policy also favors the prompt  
7 resolution of disputes, the requested stay will necessarily be short, as Debtor will move quickly  
8 to confirm a plan and disclosure statement, which would be delayed if the litigation moves  
9 forward.

10 23. Additionally, principles of judicial economy and comity support staying the  
11 state-court litigation. As general partners, Mr. Wilson's and Mr. Vanderham's potential  
12 liability flows from Debtor's business, and is inextricably intertwined with Debtor's claims.  
13 The parties' claims and cross-claims should be resolved together, rather than proceeding as to  
14 the partners and without Debtor. Without a stay as to the partners, the potential of inconsistent  
15 judgments arise.

16 WHEREFORE, Debtor prays that the Court enter an order as follows:

17 1. Granting the *Motion for Preliminary Injunction under 11 U.S.C § 105 Staying*  
18 *Litigation against Debtor's General Partners;*

19 2. Issuing a preliminary injunction under 11 U.S.C. § 105 staying Tulare County  
20 Superior Court case no. 12CECG00907 - *Kasiner Farms vs J & D Wilson* until Debtor  
21 confirms a plan of reorganization or Debtor's case is dismissed; and

22 3. For such other relief as the Court deems just and proper.

23 Date: February 27, 2014

KLEIN, DeNATALE, GOLDNER,  
COOPER, ROSENLIB & KIMBALL, LLP

24  
25  
26 By /s/ Jacob L. Eaton

JACOB L. EATON

Proposed Attorneys for Debtors-in-Possession